

**Testimony of**  
**Ashley L. Taylor, Jr.**  
**Legal Counsel**  
**Council of Independent Tobacco Manufacturers of America**

**Before the**  
**U.S. House Committee on Agriculture**  
**Public Hearing**  
**July 24, 2003**  
**1300 Longworth House Office Building**  
**Washington, DC**

**Introduction**

Good morning Mr. Chairman and members of the Committee. I serve as legal counsel to the Council of Independent Tobacco Manufacturers of America, a national trade association better known as ("CITMA"). Thank you for allowing me the opportunity to testify before you today.

**CITMA**

CITMA consists of more than a dozen small tobacco manufacturers that have elected not to become signatories to the Master Settlement Agreement between the Big Four tobacco manufacturers and the state Attorneys General. As non-signatories to the MSA, CITMA members are required under state law enacted as part of the MSA to make certain escrow deposits based upon the number of sticks sold in the MSA states.

To become a CITMA member, a tobacco manufacturer must not only be duly authorized to conduct business in the United States, but must also be in compliance with the state escrow obligations imposed pursuant to the MSA as well as other applicable state and federal laws governing tobacco manufacturers and the manufacturing process, including, but not limited to federal and state licensing and bonding requirements, Center for Disease Control ingredients reporting mandates, Federal Trade Commission health label warning, etcetera.

CITMA was formed for a single purpose, which is to advocate for consistent treatment of all tobacco manufacturers. CITMA was not formed for the purpose of obtaining any competitive advantage through the legislative process, but rather to ensure that when other manufacturers sought to do so, a contrary voice would be present articulating the inequity of their efforts. Unfortunately, certain forces have sought to enact policies designed to place CITMA members at a competitive disadvantage in the marketplace. Let me again re-emphasize that CITMA is not

opposed to legislation regulating the tobacco industry -- provided such measures are applied equally and not targeted solely upon our members.

Because CITMA members are, in many cases, former tobacco farmers and long-standing members of the local business community, they are sensitive to the plight of their local communities and the small tobacco growers from whom they purchase their leaf. Like the small tobacco farmer, CITMA members must battle the same forces facing all small businesses in this uncertain and constantly changing tobacco industry. CITMA members' experiences as small business owners are often reflected in their business practices.

For example, CITMA members, more often than not, have located their manufacturing facilities in economically depressed areas, which are the same tobacco-producing communities experiencing the loss of tobacco farms. Their factories employ members of the local communities and are, in many cases, the best paying jobs in the local community. CITMA members have facilities all over the country, including factories in Arizona, Florida, New York, North Carolina, Tennessee, Oregon, Virginia, Oklahoma, South Carolina and Kentucky, communities where such high-paying manufacturing jobs are important. Another member of CITMA has a facility in Miami, Florida, with a workforce that is more than ninety-five percent (95%) Hispanic.

### **Tobacco Quota Buyout**

With regard to the formulation of tobacco quota buyout legislation, CITMA supports your efforts to provide assistance to tobacco-dependent communities, particularly those comprised of small family farms. CITMA further supports legislation that seeks to lend such assistance by making payments to tobacco quota holders as compensation for the loss of the tobacco quota asset.

Turning to certain specific measures that must be addressed in any legislation, CITMA makes the following observations. First, CITMA supports the concept that the fund from which quota holders would be paid should be created, in part, by assessments on manufacturers and importers who sell tobacco products in domestic commerce in the United States, with each class of tobacco product assigned a base payment. However, CITMA strongly urges this Committee to consider a payment schedule based upon a company's volume of domestic sales rather than any proportional market share formula. The latter approach is fraught with difficulties, which would make such a collection system less effective than a straight volume based calculation. The system should be designed to make monetary collection workable over the life of the program. This can be accomplished by tying the system to reports that manufacturers are currently required to make to the federal agencies and not creating a new reporting system, which will needlessly add another level of bureaucracy.

Any form of buyout should be funded through the Federal excise tax. This is the only way to ensure collection of the money from importers, and in any case, any fee paid direct by manufacturers would simply be passed through to the consumer. This makes the scheme equitable and fair to all manufacturers and suggests the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) should have regulatory control over tobacco products as it does for liquor.

Regarding the administrative costs associated with administering a program, CITMA believes the most cost-effective method would be to fund it through the private sector, as demonstrated by the many private payment programs that have contracted with states to provide similar services. One of the current buyout proposals, HR 245, includes a provision whereby each tobacco producer will be assessed a fee of no more than one-cent for each pound of tobacco produced. While a one-cent per pound assessment may not sound onerous, it could be a significant expense for small companies, and CITMA opposes it.

In addition, CITMA does not want to connect payment for the buyout to payments made under the Master Settlement Agreement. The various designations such as Original Participating Manufacturer, Non-Participating Manufacturer and Subsequent Participating Manufacture, which are relevant for some purposes, should be ignored relative to this proposal. There should be no discriminatory fees based upon Master Settlement Agreement participation or lack thereof and CITMA strongly objects to the buy-out program becoming a mechanism through which certain companies seek to obtain an off-set or "credit" for their MSA payments to the states.

Lastly, CITMA is opposed to the placement of tobacco products under the jurisdiction of the Federal Drug Administration. As we see the two issues, there is no need to connect the two issues, particularly given the tobacco industry's numerous positions on expanding FDA's authority. If however the FDA regulation is raised, CITMA asks that the regulatory field remain equal and small manufacturers be given an adequate time to change product aspects based upon a government standard and not a standard advocated by any company or group of companies.

### **Master Settlement Agreement**

The fact that CITMA members elected not to join the MSA should not be misconstrued to suggest that our members are all new to the tobacco business. As you all know, the tobacco market is divided into essentially four tiers and most assume that CITMA members are confined to tiers three and four, the "discount cigarette market". However, while the third and fourth tier of the tobacco industry has grown considerably in the past three years due to the consumers' desire for a quality product at a reasonable price, the tobacco products sold by our members are not limited to the so-called discount cigarette market. CITMA members sell a variety of tobacco products including smokeless tobacco, roll-your-own or make-your-own product and of course

cigarettes and in all tiers of the tobacco market. One of our founding members North Atlantic Trading Company, Inc. owns Beechnut brand, a chewing tobacco product sold for over one-hundred and fifty years.

Unlike Big Tobacco, CITMA member companies have bucked the industry trend of depending more and more on foreign tobacco leaf for its products. CITMA members like using American tobacco in their products. The majority of our members use more than 90% American flue and burley tobacco in their products. At a time when Big Tobacco is becoming less supportive of the American farmer, CITMA members are standing by the small American tobacco farmer.

### **Conclusion**

In sum, CITMA members believe in the free market system and ask for no special favors or dispensation. Instead, we only ask that rules apply with equal force to all tobacco manufacturers, small and large alike.

Thank you again, Mr. Chairman and members of the committee, for allowing us to share our concerns with you all this morning. With that, I conclude my remarks and I would be pleased to answer any questions.